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Colonel Montgomery's lecture on reorganizations and the closed transaction lacks the quiet power which most of the other lectures show.

On the whole, the lectures are a valuable contribution to the intelligent consideration of the income-tax problems.

EDWARD H. WARREN.

THE CASE OF REQUISITION. By Leslie Scott and Alfred Hildesley. With an introduction by Sir John Simon. Oxford: Clarendon Press. 1920. pp. xxiv, 307.

This book examines the constitutional questions involved in the recent decision of the House of Lords in *The Attorney-General v. De Keyser's Royal Hotel, Ltd.*,¹ which affirmed a decision of the Court of Appeal.² The Crown had taken over a hotel for administrative purposes connected with the war. The owner's claim for compensation as a matter of right was resisted on grounds of prerogative, and also on the basis of the Defence of the Realm Acts. It was held that the petitioner was entitled to recover *ex lege* and not merely *ex gratia*.³

Prior to this case it seemed to be a generally accepted proposition that, in the absence of express constitutional limitations, such as exist in the Fifth and Fourteenth Amendments of the Constitution of the United States, the sovereign could take the property of a subject for purposes of national defence without compensation, and that the subject had no redress as a matter of right. The Court of Appeal had so held in 1915 in *In re a Petition of Right*.⁴ Properly considering himself bound by this decision, the judge before whom the petition came in the case of *Attorney-General v. De Keyser's Royal Hotel, Ltd.* decided against the suppliant. The Court of Appeal went more thoroughly into historical records and came to the conclusion that since the Crown had never taken the subject's land for the defence of the realm without compensation no such prerogative exists. Instead of overruling the prior decision, the court felt it necessary, in order to permit the petitioner to recover, to distinguish the case in three respects from that decided in 1915. The House of Lords in affirming the decision of the Court of Appeal recognized that the distinctions were untenable and in effect overruled *In re a Petition of Right*.

"... The official contention that the Crown could acquire compulsorily the use of a subject's land for the purposes of national defence without incurring any obligation to pay for it was shown to be without historical or legal foundation, and the House of Lords by a unanimous judgment laid it down that while public necessity may justify expropriation it cannot destroy the subject's right to be paid for the land so taken" (p. xviii). "... The judgment in the Case of Requisition ... teaches ... the lesson that the foundations of constitutional law lie deeply embedded in ground which is in the joint occupation of historians and lawyers, and that the protection of private citizens against unfounded claims by the Executive is one of the most valuable functions of the judiciary" (p. xxiv).

The above passages, quoted from the introduction, are perhaps somewhat extravagant in light of the *ratio decidendi* of the Lords. The right to recover was based on statutory provisions. The learned judges concurred substantially in the view that Acts of Parliament had curtailed the royal prerogative. "I should prefer to say that when such a statute expressing the will and in-

¹ [1920] A. C. 508.

² [1919] 2 Ch. 197.

³ For a discussion of the decision of the Court of Appeal see 33 HARV. L. REV.

713, 735.

⁴ [1915] 3 K. B. 649.

tention of the King and of the three Estates of the Realm is passed, it abridges the Royal Prerogative while it is in force to this extent, that the Crown can only do the particular thing under and in accordance with the statutory provisions, and its Prerogative power to do it is in abeyance."⁵ There was no doubt, however, in the minds of the judges that Parliament could authorize a taking of private property for national defence without any compensation. One may wonder whether a "prerogative" of Parliament may not become as irksome as a prerogative of the Crown, and whether the function of the judiciary should not also extend to a protection of private citizens against the legislature.

The book is a scholarly discussion of this aspect of the royal prerogative. It cites and examines most of the statutes and cases bearing upon the matter from the time of Magna Charta. It contains chapters on the Defence Acts, the prerogative of the Crown, the Defence of the Realm Consolidation Act, the effect of the statute upon the prerogative, petition of right; notes on the right to compensation in respect of requisitioned property other than land, the Indemnity Act, 1920; and appendices containing statutes, historical documents, and the judgment of the House of Lords in *Attorney-General v. De Keyser's Royal Hotel, Ltd.*

A PRACTICAL TREATISE ON ABSTRACTS AND EXAMINATIONS OF TITLE TO REAL PROPERTY. By George W. Warvelle. Fourth edition. Chicago: Callaghan and Company. 1921. pp. xxvii, 757.

The chief value of this book lies in the practical suggestions it makes for the abstractor of titles or conveyancer in the narrow, technical field of his craft. The book is composed in part of these suggestions and in part of the statement of the general rules of the law of property and wills. There are chapters on the acquisition of title, uses and trusts, dower and curtesy, on descent, on insolvency and bankruptcy, on wills, and on adverse title. Such chapters are not the main purpose of the work and are the least valuable part of it. The author has properly dealt briefly with these topics, but they could frequently be better expounded. In several instances positive misstatements are found. The language of § 402 that a perpetuity occurs "whenever there is a suspension of the power of alienation for a longer period than a life or lives in being at the creation of the estate" has not been changed since the first edition in 1883. Since that date it has been clearly demonstrated that the Rule against Perpetuities strikes at the creation of remote future interests even if alienable. The statement of the Rule in "Shelly's" (Shelley's) Case, § 386, perpetuates a common error.

But the other parts of the book have proved of decided value to the practitioner, and the work here is well done. There is no better place to find the description of our records and indices, the extent of the search which should be made, the method of compiling the abstract, the statement of errors and omissions frequently met, and the form and presentation of opinions. The appendix, as in the third edition, contains forms of New England abstracts and tables of land measures. All kinds of United States conveyancing are dealt with, New England and western methods of recording and indexing, state and United States patents, and tax titles.

Of the four editions the most radical changes occurred in the third. Not much new matter is added in the present edition.

J. W.

⁵ [1920] A. C. 508, 539, per Lord Atkinson.